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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,037	12/29/2000	Peter J. Sallaway	P04756 (NATI15-04756)	7732

7590 10/17/2006
DOCKET CLERK
P.O. DRAWER 800889
Dallas, TX 75380

EXAMINER

MOORE, IAN N

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 10/17/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/751,037
Filing Date: December 29, 2000
Appellant(s): SALLAWAY ET AL.

William A. Munck
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

MAILED
OCT 17 2006
GROUP 2600

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This is in response to the appeal brief filed 11-16-2005 appealing from the Office action mailed 3-28-2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect (i.e. appellant's stated in page 2 that examiner refused entry the amended).

The amendment after final rejection filed on 5/27/05 has been entered (i.e. per Advisory action (6-14-2005) paragraph 7 state that for the purpose of appeal, the proposed amendment will be entered).

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct since the claims reflect to the entered proposed amendment filed after final rejection.

(8) Evidence Relied Upon

US 5,740,163	HERVE	4-1998
US006721916B2	AGAZZI	4-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7,9-16,18-24, and 26-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Herve (U.S. 5,740,163).

Regarding Claim 18, Herve'163 discloses a network transceiver that is couplable to a computer system (see FIG. 1, Dual-mode ISDN/STN transmitter/receiver which couples to the terminal):

an encoder (see FIG. 1, the combined system of Audio/Video encoder CODEC 13/14/6/25) that encodes data to be transmitted by said network transceiver (see col. 1, lines 29-35; see col. 2, lines 39-44, 56-66; note that each encoder encodes the transmit data by the terminal);

a decoder (see FIG. 1, the combined system of Audio/Video decoder CODEC 13/14/6/25) that decodes data received by said network transceiver (see col. 1, lines 29-35; see col. 2, lines 39-44, 56-66; note that each decoder decodes the received data by the terminal); and

a controller (see FIG. 1, Management System 18), associated with said decoder and said encoder (see FIG. 1, note that Management System associates/relates to the encoder and decoder by way of Mux/Demux 14 and a switch 28), that controls operating modes of said network transceiver (see col. 3, lines 19-40; Management System 18 manages/controls the operation modes of the terminal), comprising:

an encoder portion operable to direct said encoder to encode data (see FIG. 1, CODEC 13 and 6 are directed to perform/encode in RNIS, and/or CODEC 24 and 25 are directed to perform/encode in RTC) in one of an industry-compliant mode (see FIG. 1, ISDN mode when the switch 28 is at RNIS) and a custom mode (see FIG. 1, STN mode when the switch 28 is at RTC; see col. 3, lines 40-65); and

a decoder portion operable (see FIG. 1, CODEC 13 and 6 are directed to perform/decode in RNIS, and/or CODEC 24 and 25 are directed to perform/decode in RTC), in response to

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sensing data received in said custom mode at said decoder (see col. 3, lines 63 to col. 4, lines 5; note that the data is received at the decoder in STN mode), to direct:

said decoder to decode said received data in said custom mode (see FIG. 1, note that in STN mode switch 28 must be toggled to RTC; upon receiving the data in STN mode, STN decoder RTC 34/38 must be directed/programmed/assigned to decode the data; also note that per FIG. 1 and 2, it is clear that each STN decoder part/portion must decode the data); and

said encoder portion to direct said encoder to encode data in said custom mode (see FIG. 1; during STN mode, STN encoder RTC 33/37 must be directed/programmed/assigned to encode the data; also note that per FIG. 1 and 2, it is clear that each STN encoder part/portion must encode the data); see col. 3, lines 40-65.

Regarding Claim 1, the system claim, which has substantially disclosed all the limitations of the respective claim 18. Therefore, it is subjected to the same rejection.

Regarding Claim 2, Herve'163 discloses a state machine (see FIG. 1, the combined system of management terminal, HDLC controller 21, and switch 28) that includes at least two alternate states indicating whether said custom mode is enabled (see col. 3, lines 19-40, 62-67 to col. 4, lines 2; note that the combined management system controls both STN and ISDN modes, and controller indicates the STN mode by enabling the switch to RTC).

Regarding Claim 3, Herve'163 discloses wherein at least said decoder portion is embodied in a peripheral card that is couplable to a computer system (see FIG. 1, the combined system of Audio/Video decoder CODEC 13/14/6/25 portion/chip/ASIC must be attached/embodied in a peripheral card/unit which is coupled to the terminal/system which has a capability to compute/determine which mode to use) to allow said computer system to process

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said decoded data (see FIG. 1, the computing/determining terminal/system process decoded data); see col. 1, lines 29-35; see col. 2, lines 39-44, 56-66.

Regarding Claim 4, Herve'163 discloses a reset portion (see FIG. 1, a switch 28) that is operable to direct said controller to reset said operating mode of the network transceiver to said industry-compliant mode (see FIG. 1, note that switch 28 is controlled by the combined management system to reset/switch from STN mode (RTC) to ISDN mode (RNIS); see col. 3, lines 60-65.)

Regarding Claim 5, Herve'163 discloses wherein said reset portion is associated with said decoder portion and operates to direct said decoder portion (see FIG. 1, CODEC 13 and 6 RNIS are associated/related to switch 28 RNIS mode, they operate/perform/direct the decoding in RNIS) to direct:

said decoder to decode said received data in said industry-compliant mode (see FIG. 1, note that in ISDN mode switch 28 must be toggled to RNIS; upon receiving the data in RNIS mode, ISDN decoder RNIS 32/36 must be directed/programmed/assigned to decode the data; also note that per FIG. 1 and 2, it is clear that each ISDN decoder must decode the data); and

said encoder portion to direct said encoder to encode data in said industry-compliant (see FIG. 1; during ISDN mode, ISDN encoder RNIS 31/35 must be directed/programmed/assigned to encode the data; also note that per FIG. 1 and 2, it is clear that each ISDN encoder part/portion must encode the data); see col. 3, lines 40-65.

Regarding Claim 6, Herve'163 discloses wherein said decoder portion is further operable, in response to sensing data received in said industry-compliant mode at said decoder (see col. 3, lines 63 to col. 4, lines 5; note that the data is received at the decoder in ISDN mode),

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to direct said decoder to decode said received data from said industry-compliant mode (see FIG. 1, upon receiving the data in RNIS mode, ISDN decoder RNIS 32/36 must be directed/programmed/assigned to decode the data; also note that per FIG. 1 and 2, it is clear that each ISDN decoder part/portion must decode the data); see col. 3, lines 40-65.

Regarding Claim 7, Herve'163 discloses wherein said decoder portion is further operable to direct said encoder portion to control data transmission from said encoder in said industry-compliant mode (see FIG. 1; note that in ISDN mode switch 28 must be toggled to RNIS, and both encoder and decoder must perform in ISDN mode, respectively. Then, ISDN encoder RNIS 31/35 must be directed/programmed/assigned to encode the data; also note that per FIG. 1 and 2, it is clear that each ISDN encoder part/portion must encode the data); see col. 3, lines 40-65.

Regarding Claim 9, the method claim, which has substantially disclosed all the limitations of the respective system claim 18. Therefore, it is subjected to the same rejection.

Regarding Claim 10, Herve discloses said decoder to decode said received data in said custom mode (see FIG. 1, note that in STN mode switch 28 must be toggled to RTC; upon receiving the data in STN mode, STN decoder RTC 34/38 must be directed/programmed/assigned to decode the data; also note that per FIG. 1 and 2, it is clear that each STN decoder part/portion must decode the data).

Regarding Claim 11, the claim, which has substantially disclosed all the limitations of the respective claim 2. Therefore, it is subjected to the same rejection.

Regarding Claim 12, the claim, which has substantially disclosed all the limitations of the respective claim 3. Therefore, it is subjected to the same rejection.

Regarding Claim 13, the claim, which has substantially disclosed all the limitations of the respective claim 4. Therefore, it is subjected to the same rejection.

Regarding Claim 14, the claim, which has substantially disclosed all the limitations of the respective claim 5. Therefore, it is subjected to the same rejection.

Regarding Claim 15, the claim, which has substantially disclosed all the limitations of the respective claim 6. Therefore, it is subjected to the same rejection.

Regarding Claim 16, the claim, which has substantially disclosed all the limitations of the respective claim 6. Therefore, it is subjected to the same rejection.

Regarding Claim 19, the claim, which has substantially disclosed all the limitations of the respective claim 2. Therefore, it is subjected to the same rejection.

Regarding Claim 20, the claim, which has substantially disclosed all the limitations of the respective claim 3. Therefore, it is subjected to the same rejection.

Regarding Claim 21, the claim, which has substantially disclosed all the limitations of the respective claim 4. Therefore, it is subjected to the same rejection.

Regarding Claim 22, the claim, which has substantially disclosed all the limitations of the respective claim 5. Therefore, it is subjected to the same rejection.

Regarding Claim 23, the claim, which has substantially disclosed all the limitations of the respective claim 6. Therefore, it is subjected to the same rejection.

Regarding Claim 24, the claim, which has substantially disclosed all the limitations of the respective claim 6. Therefore, it is subjected to the same rejection.

Regarding Claim 26, the method claim, which has substantially disclosed all the limitations of the respective system claim 18. Therefore, it is subjected to the same rejection.

Regarding Claim 27, the claim, which has substantially disclosed all the limitations of the respective claim 10. Therefore, it is subjected to the same rejection.

Regarding Claim 28, Herve'163 discloses encoding data in said industry-compliant mode (see FIG. 1, note that in ISDN mode, the switch 28 is toggled to RNIS; in RNIS mode, encoders RNIS 31/35 must encode the data); see col. 3, lines 40-6.

Regarding Claim 29, Herve'163 discloses decoding data in said industry-compliant mode (see FIG. 1, note that in ISDN mode, the switch 28 is toggled to RNIS; in RNIS mode, decoders RTC 32/36 must decode the data); see col. 3, lines 40-6.

Regarding Claim 30, Herve discloses a controller (see FIG. 1, Management System 18), associated with said decoder and said encoder (see FIG. 1, note that Management System associates/relates to the encoder and decoder by way of Mux/Demux 14 and a switch 28), that controls operating modes of said network transceiver (see col. 3, lines 19-40; Management System 18 manages/controls the operation modes of the terminal), comprising: an encoder portion operable to direct said encoder to encode data (see FIG. 1, CODEC 13 and 6 are directed to perform/encode in RNIS, and/or CODEC 24 and 25 are directed to perform/encode in RTC) in one of an industry-compliant mode (see FIG. 1, ISDN mode when the switch 28 is at RNIS) and a custom mode (see FIG. 1, STN mode when the switch 28 is at RTC; see col. 3, lines 40-65).

Regarding Claim 31, Herve discloses said decoder to decode said received data in said custom mode (see FIG. 1, note that in STN mode switch 28 must be toggled to RTC; upon receiving the data in STN mode, STN decoder RTC 34/38 must be directed/programmed/assigned to decode the data; also note that per FIG. 1 and 2, it is clear that each STN decoder part/portion must decode the data).

Regarding Claim 32, the claim, which has substantially disclosed all the limitations of the respective claim 2. Therefore, it is subjected to the same rejection.

Regarding Claim 33, the claim, which has substantially disclosed all the limitations of the respective claim 3. Therefore, it is subjected to the same rejection.

Regarding Claim 34, the claim, which has substantially disclosed all the limitations of the respective claim 4. Therefore, it is subjected to the same rejection.

Regarding Claim 35, the claim, which has substantially disclosed all the limitations of the respective claim 5. Therefore, it is subjected to the same rejection.

Regarding Claim 36, the claim, which has substantially disclosed all the limitations of the respective claim 6. Therefore, it is subjected to the same rejection.

Regarding Claim 37, the claim, which has substantially disclosed all the limitations of the respective claim 6. Therefore, it is subjected to the same rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8,17,25 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herve'163 in view of Agazzi (U.S. 6,721,916).

Regarding claim 8, Herve'163 discloses wherein said industry-compliant mode as describe above in claims 1,9,18 and 26.

Herve'163 does not explicitly disclose IEEE 802.3ab.

However, the above-mentioned claimed limitations are taught by Agazzi'916. In particular, Agazzi'916 teaches wherein said industry-compliant mode is compliant with IEEE 802.3ab (see **FIG. 1, Transceiver block 102 which operates in conformance with IEEE 802.ab. standard; see col. 1, line 34-34, see col. 6, lines 11-20**).

In view of this, having the system of Herve'163 and then given the teaching of Agazzi'916, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Herve'163, by utilizing IEEE 802.ab. as industrial/standard mode, as taught by Agazzi'916. The motivation to combine is to obtain the advantages/benefits taught by Agazzi'916 since Agazzi'916 states at col. 1, line 46 to col. 2, lines 4 that such modification would provide a smooth and non-disruptive evolution from existing standard, and lower cost than other technologies of comparable speed.

Regarding Claim 17, the claim, which has substantially disclosed all the limitations of the respective claim 8. Therefore, it is subjected to the same rejection.

Regarding Claim 25, the claim, which has substantially disclosed all the limitations of the respective claim 8. Therefore, it is subjected to the same rejection.

Regarding Claim 38, the claim, which has substantially disclosed all the limitations of the respective claim 8. Therefore, it is subjected to the same rejection.

(10) Response to Argument

I. Ground of rejection # 1: Claims 1-7, 9-16,18-24 and 26-37

The applicant argued that, "...examiner fails to establish that Herve anticipates a "decoder portion" that directs an encoder portion to encode data in a custom mode "in response to sensing data receive in [the] custom mode at [a] decoder...Herve lacks any mention of using the encoders to encode data in a particular mode "in response to sensing" data received in that particular mode at the decoders... Herve never recites that the particular mode (ISDN or STN) is selected by "sensing" data received in that particular mode at a decoder...Herve clearly does not choose the ISDN or STN mode by "sensing" data received in a particular mode at a decoder..." in page 7, paragraph 1-3; page 8, paragraph 2; page 9-10.

In response to applicant's argument, the examiner respectfully disagrees with the argument above.

Herve discloses an encoder portion operable to direct said encoder to encode data (see **FIG. 1, CODEC 13 and 6 are directed to perform/encode in RNIS, and/or CODEC 24 and 25 are directed to perform/encode in RTC**) in one of an industry-compliant mode (see **FIG. 1, ISDN mode when the switch 28 is at RNIS**) and a custom mode (see **FIG. 1, STN mode when the switch 28 is at RTC; see col. 3, lines 40-65**); and

a decoder portion operable (see **FIG. 1, CODEC 13 and 6 are directed to perform/decode in RNIS, and/or CODEC 24 and 25 are directed to perform/decode in RTC**), in response to sensing data received in said custom mode at said decoder (see **col. 3, lines 63 to col. 4, lines 5; note that the data is received at the decoder in STN mode**), to direct:

said decoder to decode said received data in said custom mode (see FIG. 1, note that in STN mode switch 28 must be toggled to RTC; upon receiving the data in STN mode, STN decoder RTC 34/38 must be directed/programmed/assigned to decode the data; also note that per FIG. 1 and 2, it is clear that each STN decoder part/portion must decode the data); and

said encoder portion to direct said encoder to encode data in said custom mode (see FIG. 1; during STN mode, STN encoder RTC 33/37 must be directed/programmed/assigned to encode the data; also note that per FIG. 1 and 2, it is clear that each STN encoder part/portion must encode the data); see col. 3, lines 40-65.

Note that Herve teaches the encoder (see FIG. 1, CODEC 13 and 6 are directed to perform/encode in RNIS, and/or CODEC 24 and 25 are directed to perform/encode in RTC) defines/directs to encode in either RNIS mode or RTC mode by switching to either RNIS or RTC mode for outgoing information. Similarly, the decoder (see FIG. 1, CODEC 13 and 6 are directed to perform/decode in RNIS, and/or CODEC 24 and 25 are directed to perform/decode in RTC), when (or in response to) sensing/detecting/receiving/aware the data in the RTC mode, it decodes the incoming information in RTC mode. Note that the applicant does not define what or how “sensing” is within the claim. Thus, examiner asserts, “sensing” as “detecting/receiving/feeling/aware”.

Note that FIG.1 discloses CODECs (i.e. encoder and decoder) as one combined component operating in either RNIS mode or RTC mode. Since CODEC is one combined encoding and decoding component, it is clear that both encoding and decoding must be performed in same or synchronize manner. Thus, it is clear that CODEC must be synchronized in

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order to encode and decode the data that is the whole purpose and function of CODEC. For example, the data is encoded in RTC mode by the encoder, in response to switching to RTC mode, the decoder must decode in RTC mode in order to decode the data, which is the purpose and function of CODEC. Thus, Herve clearly discloses that the particular mode (ISDN (i.e. RNIS mode) or STN (i.e. RTC mode)) is selected by sensing/receiving/data received in that particular mode at a decoder.

The applicant argued that, “...examiner fails to identify where Herve discloses using a particular mode at a encoder in response to sensing, detecting or receiving data encoded in that mode at a decoder...fails to explain how the management system 18 of Herve is capable of selecting a mode for an encoder in response to sending data receive in that mode at any of decoders 32,34,36, 38...” in page 9.

In response to applicant's argument, the examiner respectfully disagrees with the argument above.

Per applicant FIG. 1, encoder 120 encodes the data before it transmit and the decoder 125 decodes the received data. Similarly, Herve coding portion of CODEC 6,13,24 and 25 encodes the data before it transmits, and decoding portion of CODEC 6,13,24 and 25 decodes the received data.

Herve disclose as follows:

A management system 18 of an audiovisual call between the ISDN and the terminal connected to this network, according to CCITT recommendation H.242, is connected between the interface 17 on the terminal side and one of the inputs of the mux/demux 14 on the video codec 6 side. **The management system 18 is delimited by a closed hatched line in FIG. 1. It includes a management terminal 19 equipped with a control keyboard 20, an HDLC (High Level Data Link Control) controller 21 that performs the frame generation and analysis of the network signaling information in the ISDN channel at a rate of 16 Kbit/s. This controller 21 is connected between the layer 1 of the physical interface S 17 and the layers 2**

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and 3, 22, of the OSI reference model. The layer 2 corresponds to the data link layer and the layer 3 corresponds to the base call procedures layer. These layers comply respectively with CCITT recommendations Q.921 and Q.931. (see col. 3, line 19-35)

A modem 27 used to modulate/demodulate a digital data stream on the STN telephone line, in conformance with the V.32bis, V32ter and Vfast CCITT standards, is connected between the ISDN/STN mux and demux, 14 and 26, **and the layer 1 of the physical interface S 17 via a switch 28 used to select either ISDN or STN mode.** During ISDN operation, the modem 27 is disconnected. (see col. 3, line 59-65)

In view of the teaching of Herve above, *inter alia*, a management system 18 controls the layer 1 operation via a control of switch 28. Switch 28 is selected/toggled-to either ISDN or STN mode. After selection ISDN/STN mode, upon receiving the data in STN mode, STN decoder RTC 34/38 must be directed/programmed/assigned to decode the data; also note that per FIG. 1 and 2, it is clear that each STN decoder part/portion must decode the data, and per FIG. 1; during STN mode, STN encoder RTC 33/37 must be directed/programmed/assigned to encode the data; also note that per FIG. 1 and 2, it is clear that each STN encoder part/portion must encode the data); see col. 3, lines 40-65.

As shown in Herve FIG. 1, the encoder portion (i.e. encoder of CODEC 13, 6, 24,25), upon receiving the direction/control information from the Management system 18 via Mux/Deumx 14 and 26, directs/manages and performs encoding data in the directed mode (i.e. RTC or RNIS mode). Similarly, the decoder portion (i.e. decoder of CODEC 13, 6, 24,25), upon receiving the direction/control information from the Management system 18 via Mux/Deumx 14/26 and a switch 28, directs/manages and performs decoding data in the directed mode (i.e. RTC or RNIS mode), which is the mode that is used to encoded the data; also see Herve col. 3, lines 5-40.

I. Ground of rejection # 2: Claims 8,17,25 and 38

The applicant argued that, "...claim 8,17,25 and 38 are depend from claims 1,9,18 and 26. As shown above, claims 1,9,18 and 26 are patentable. As a result, claims 8,17,25 and 38 are patentable due to their dependence from allowable base claims..." in page 12.

In response to applicant's argument, please see responses above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Conclusion

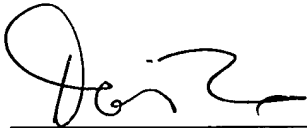
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Ian N. More
October 10, 2006

Conferees:



Doris To



Chau T. Nguyen